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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/295,230	04/19/1999	CHRISTOPHER EWING	3175.01A	6950

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EXAMINER

BORISSOV, IGOR N

ART UNIT	PAPER NUMBER
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3628

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05/01/2012

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/295,230	Applicant(s) EWING, CHRISTOPHER	
	Examiner IGOR BORISSOV	Art Unit 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-26,28-58,60-90,92-108,110-122 and 124-137 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-26,28-58,60-90,92-108,110-122 and 124-137 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>06/03/2010</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on has been entered.

Response to Amendment

Amendments received on 06/03/2010, 06/07/2010 and 07/05/2010 are acknowledged and entered. Claims 27, 59, 91, 109 and 123 have been canceled. Claims 1, 19, 51-58, 60-61, 129, and 134-137 have been amended. Claims 1-26, 28-58, 60-90, 92-108, 110-122, and 124-137 are currently pending in the application.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 19, 134-136 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

Claim 19 contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

A single means claim, i.e., where a means recitation does not appear in combination with another recited element of means, is subject to an undue breadth rejection under 35 U.S.C. 112, first paragraph. *In re Hyatt*, 708 F.2d 712, 714-715, 218 USPQ 195, 197 (Fed. Cir. 1983) (A single means claim which covered every conceivable means for achieving the stated purpose was held nonenabling for the scope of the claim because the specification disclosed at most only those means known to the inventor.). When claims depend on a recited property, a fact situation comparable to *Hyatt* is possible, where the claim covers every conceivable structure (means) for achieving the stated property (result) while the specification discloses at most only those known to the inventor.

MPEP 2164.08(a).

Claim 19 recites only one element - a website. The claims are not written in "means-plus-function" language, however, in *Fiers v. Revel*, (CAFC) 25USPQ2d 1601, 1606 (1/19/1993, the CAFC affirmed a rejection under 35 USC 112 of a claim reciting a single element that did not literally use "means-plus-function" language.

Claims ... are drawn to any of the listed devices, regardless of construct, that perform the function recited. This parallels the fact situation in *Fiers* wherein "a DNA" and a result was recited. The CAFC stated in *Fiers* at 1606 "Claiming all DNA's that achieve a result without defining what means will do so is not in compliance with the description requirement; it is an attempt to preempt the future before it has arrived".

See also *Ex parte Maizel*, (BdPatApp&Int) 27 USPQ2d 1662, 1665 and *Ex parte Kung*, (BdPatApp&Int) 17 USPQ2d 1545, 1547 (1/30/1989) where the claims at issue were rejected for being analogous to single means claims even though "means" was not

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literally used. Thus, claims 18-25 yield "devices" that achieve a result without defining what will do so.

Same reasoning applied to claims 134-136.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-26, 28-58, 60-90, 92-108, 110-122, and 124-137 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Furthermore, independent claims 1, 19, 129 and 134-137 utilize "enabling" steps, which is confusing, because the scope of the term "enabling" is unclear. So as there is no actual interaction of users with a computer recited (required) in the claims, it is unclear to what extent the recited enabling steps are considered.

Claim 1 is missing a period "." at the end of the claim, thereby making the claim indefinite.

Claim 5 recites (emphasis added): "giving said second party an opportunity to choose whether said second party will accept, or will not accept, attempting gifts...",

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which is confusing, because the scope of the term "opportunity" is unclear. It appears that the selection is done by the recipient, that is the recipient decides whether accept the gift, or not. As such, it is unclear what this phrase actually mean: "giving said second party an opportunity to choose".

Furthermore, the claim describes only one outcome of the recited method step: "if said second party exercises the opportunity, storing in a database in association with said second party's pseudonym or name and address. " Claim 5 does not provide any information how the method should be conducted "if the second party does not exercise the opportunity", which makes the claim indefinite. Same reasoning applied to claims 7 and 8.

Claim 19 recites (emphasis added):

"A gift giving apparatus comprising:
a gift giving website enabling, over a network, a first party on a computer to send a gift to a second party, wherein the enabling is carried out without revealing a non-pseudonymous name corresponding to said first party in a membership database to said second party and without revealing a non-pseudonymous name of said second party in said database to said first party over said network, wherein the website allows, if the gift is refused, the second party to respond to said first party that attempted sending said gift."

The language of the claim is vague and indefinite. It is not clear which part of the claim represents known features and which part recites novel features of the invention. Specifically, it is unclear whether said network, membership database and first party computer are elements of said apparatus. The only positive recitation of a structural element is a "website". Further, the whole claim reads as an intended use rather than

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an apparatus. Examiner recognizes that a functional limitation is an attempt to define something by what it does, rather than by what it is, and functional language does not, in and of itself, render a claim improper. In *re Swinehart*, 439 F.2d 210, 169 USPQ 226 (CCPA 1971). However, in this case, the system claim completely lacks the recitation of structural elements of the apparatus.

MPEP 2114 states:

APPARATUS CLAIMS MUST BE STRUCTUR-ALLY DISTINGUISHABLE FROM THE PRIOR ART

>While features of an apparatus may be recited either structurally or functionally, claims< directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. >*In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971);< *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device *is*, not what a device *does*." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

It appears that claim 5 recites only a gift giving website. Microsoft ® Computer Dictionary, 4th Edition, 1999, page 479, defines a website as:

"A group of related HTML documents and associated files, scripts, and databases that is served up by an HTTP server on the World Wide Web".

Accordingly, it is not clear what the claim relates to: a database, a content of said database, a software for presenting said content, or a server running said software?

May be the claim relates to an interface for presenting said content? So as some of said

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claim interpretations could belong to different statutory classes of invention, the question arises how many statutory classes of invention are recited in the claim?

Furthermore, the word "if" makes the claim indefinite (Same rationale as for claim 5).

Same reasoning applied to claims 134-136.

Claim 129 is confusing, because it appears to be directed to a method, and recites a structural element":

"129. A method for processing a request to send a gift, the method comprising:
a network including a website and enabling to access a membership database in which a first party and a second party are respectively indicated as members, each of said parties having a respective pseudonymous name and non-pseudonymous name; "

It is unclear to what extent a structural element represents a method step.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-18, 33-50, 62-82, 94-108, 110-114, 126-128, and 129-133 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Independent claim 1 is not tied to a particular machine or apparatus nor does it transform a particular article into a different state or thing.

Factors weighing against patent eligibility under 35 U.S.C. 101:

There is no recitation of a machine or transformation. The recited steps of “receiving”, “processing”, “obtaining”, “securing”, “determining”, and “enabling” could be understood as steps conducted mentally or insignificant post-solution activity, like data gathering (*In re Bilski*, 88 USPQ2d 1385, 1385 (Fed. Cir. 2008). As noted in *Bilski* is the statement, “Process claim that recites fundamental principle, and that otherwise fails ‘machine-or-transformation’ test for whether such claim is drawn to patentable subject matter under 35 U.S.C. §101, is not rendered patent eligible by mere field-of-use limitations; another corollary to machine-or-transformation test is that recitation of specific machine or particular transformation of specific article does not transform unpatentable principle into patentable process if recited machine or transformation constitutes mere ‘insignificant post-solution activity.’”). The claim as a whole is a mere statement of exchanging information over a network. It is also noted that the mere recitation of a machine in the preamble in a manner such that the machine fails to patentably limit the scope of the claim does not make the claim statutory under 35 U.S.C. § 101, as seen in the Board of Patent Appeals Informative Opinion *Ex parte Langemyr et al.* (Appeal 2008-1495).

Accordingly, based upon consideration of all of the relevant factors with respect to the claims as a whole, claim 1 is held to claim an abstract idea, and are therefore

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rejected as ineligible subject matter under 35 U.S.C § 101 (Bilski v. Kappos, 95 USPQ2d 1001 (U.S. 2010)). Same rationale applies to independent claims 129 and 137.

To overcome this particular 35 U.S.C. § 101 rejection and assuming the original specification supports such an amendment in accordance with 35 U.S.C. § 112 1st paragraph, the Examiner recommends (by way of example only) Applicant amends claims 1 and 137 to state "performing, by a processor, ...".

Claims dependent on claim 1 and claim 129 do not cure 101 deficiency of said independent claims, and, therefore, are rejected on the same rationale.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-21, 25, 28-29, 51-53, 57, 60-61, 83-85, 89, 92-93, 115-122, 124-125, 129-136 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos et al (US2002/0178089) in view of Micali (US 5,812,670) and further in view of MacNaughton et al. (US 5,796,393).

As per Claims 19 and 134-136.

Bezos et al ('089) discloses:

a web site, enabling said first party to send a gift to a second party to said second party and without revealing a non-pseudonymous name of said second party to said first party, see paragraph (0016), lines 1-14 and paragraph (0022).

While Bezos et al does not teach that said enabling is conducted *with revealing* a non-pseudonymous name corresponding to said first party, and with revealing a non-pseudonymous name of said second party to said first party, Bezos et al does not explicitly teach that said enabling is conducted *without revealing* a non-pseudonymous name corresponding to said first party, and that said enabling is conducted *without* revealing a non-pseudonymous name of said second party to said first party.

Micali teaches conducting anonymous transactions between the sender and the recipient, wherein each party does not know the identity of the other party (C. 2, L. 21-24).

It would have been prima face obvious to one having ordinary skill in the art at the time the invention was made to modify Bezos et al to include that said enabling is conducted *without revealing* a non-pseudonymous name corresponding to said first party, and *without revealing* a non-pseudonymous name of said second party to said first party, as suggested in Micali, because it would advantageously allow the participants to hide the fact that they in communication with other party, as specifically stated in Micali (C. 1, L. 27-31).

Also, the combination of Bezos and Micali does not explicitly teach that said database is a membership database.

MacNaughton et al. (MacNaughton) teaches a method and system for integrating an on-line service community with a foreign service, wherein said system includes a membership database (Fig. 1B, item 44), said membership database includes names and addresses of the registered participants (parties) of said on-line community and is utilized for communication (C. 8, L. 29-33).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination to include that said database containing non-pseudonymous name of said first party and said non-pseudonymous name of said second party is a membership database, as disclosed in MacNaughton, because it would advantageously allow to provide said gift to community-oriented members, thereby expanding the audience and potentially increase revenue (MacNaughton.; C. 2, L. 63-67). Alternatively, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination to include that said database containing non-pseudonymous name of said first party and said non-pseudonymous name of said second party is a membership database, as disclosed in MacNaughton, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable. The rationale to support a conclusion that the claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination yielded

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nothing more than predictable results to one of ordinary skill in the art. KSR, 550 U.S. at, 82 USPQ2d at 1395; Sakraida v. AG Pro, Inc., 425 U.S. 273, 282, 189 USPQ 449, 453 (1976); Anderson's-Black Rock, Inc. v. Pavement Salvage Co., 396 U.S. 57, 62-63, 163 USPQ 673, 675 (1969); Great Atlantic & P. Tea Co. v. Supermarket Equipment Corp., 340 U.S. 147, 152, 87 USPQ 303, 306 (1950).

Furthermore, as per the limitation "enabling said second party to respond to said first party if refusing an attempted gift to said second party by the first party", so as the combination discloses the computer implemented system allowing/enabling communication between parties, and so as there is no user interaction with said computer system for this limitation is required, the combination discloses the recited limitation.

As per Claim 20.

Bezos et al ('089) further discloses electronically charging a fee, see paragraph (0021) line 21-22.

As per Claim 21,

Bezos et al ('089) further discloses gift is sent only responsive to an acceptance communication from the second party, see figures 5 and 6, if the telephone number is used, and a message is left, see figures 5 and 6; if the recipient doesn't return the call to provide the delivery information, the recipient has effectively refused receipt of the gift.

As per Claims 25, 57, 89, 121-122.

The apparatus of claim 19, wherein said website enables said second party to refuse said gift from said first party if said gift is of a particular product-type. (Same rationale as applied to claim 19).

As per Claim 28.

Bezos et al ('089) further discloses giving the first party an opportunity to reveal true identity information about said first party's self, see paragraph (0021) lines 21-23.

As per Claim 29.

Bezos et al ('089) further discloses giving the second party an opportunity to reveal true identity information about said second party's self, see figure 6 (603,605).

As per Claims 51-53, 60-61, 83-85, and 92-93.

The combination of Bezos et al and Micali teaches all the limitations of claims 51-53, 60-61, 83-85, 92, 93, including enabling a request to send said gift by accessing a network database containing said non-pseudonymous name of said first party and said non-pseudonymous name of said second party (Bezos, [0016], lines 19-24), except specifically teaching that said database is a membership database.

MacNaughton et al. teaches a method and system for integrating an on-line service community with a foreign service, wherein said system includes a membership

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database (Fig. 1B, item 44), said membership database includes names and addresses of the registered participants (parties) of said on-line community (C. 8, L. 29-33).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination to include that said database containing non-pseudonymous name of said first party and said non-pseudonymous name of said second party is a membership database, as disclosed in MacNaughton et al., because it would advantageously allow to provide said gift to community-oriented members, thereby expanding the audience and potentially increase revenue (MacNaughton et al.; C. 2, L. 63-67). Alternatively, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination to include that said database containing non-pseudonymous name of said first party and said non-pseudonymous name of said second party is a membership database, as disclosed in MacNaughton, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable. The rationale to support a conclusion that the claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination yielded nothing more than predictable results to one of ordinary skill in the art. KSR, 550 U.S. at, 82 USPQ2d at 1395; Sakraida v. AG Pro, Inc., 425 U.S. 273, 282, 189 USPQ 449, 453 (1976); Anderson's-Black Rock, Inc. v. Pavement Salvage Co., 396 U.S. 57, 62-63,

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163 USPQ 673, 675 (1969); Great Atlantic & P. Tea Co. v. Supermarket Equipment Corp., 340 U.S. 147, 152, 87 USPQ 303, 306 (1950).

As per Claims 115-117, 124 and 125.

Bezos et al ('089) further discloses the website determines whether said second party would accept said gift prior to said enabling said first party to send said gift, see figures 5 and 6, if the telephone number is used, and a message is left, see figures 5 and 6, if the recipient doesn't return the call to provide the delivery information, the recipient has effectively refused receipt of the gift.

As per Claims 118-120.

The apparatus of claim 22, wherein the website determines whether said second party would accept said gift prior to said enabling said first party to send said gift. (Same rationale as applied to claim 19).

As per Claim 129.

Bezos et al ('089) discloses:

receiving a request over the Internet from a first Party to send a gift, see figure 4 and paragraph (0015), lines 5-8 and (0016);

obtaining a non-pseudonymous name and address associated with the second party's pseudonym by looking up said second party's pseudonym in the database see figure 8 (801,804, 805);

processing said request to send said gift to produce computer output enabling said gift to be sent to said second party without revealing the non-pseudonymous name of one of said parties to another of the parties (0022); see figure 8 (808).

The combination of Bezos et al and Micali does not specifically teach that said database is a membership database.

MacNaughton teaches a method and system for integrating an on-line service community with a foreign service, wherein said system includes a membership database (Fig. 1B, item 44), said membership database includes names and addresses of the registered participants (parties) of said on-line community (C. 8, L. 29-33).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination to include that said database is a membership database, as disclosed in MacNaughton, because it would advantageously allow to provide said gift to community-oriented members, thereby expanding the audience and potentially increase revenue (MacNaughton; C. 2, L. 63-67). Alternatively, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination to include that said database is a membership database, as disclosed in MacNaughton, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable. The rationale to support a conclusion that the claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have

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combined the elements as claimed by known methods with no change in their respective functions, and the combination yielded nothing more than predictable results to one of ordinary skill in the art. KSR, 550 U.S. at, 82 USPQ2d at 1395; Sakraida v. AG Pro, Inc., 425 U.S. 273, 282, 189 USPQ 449, 453 (1976); Anderson's-Black Rock, Inc. v. Pavement Salvage Co., 396 U.S. 57, 62-63, 163 USPQ 673, 675 (1969); Great Atlantic & P. Tea Co. v. Supermarket Equipment Corp., 340 U.S. 147, 152, 87 USPQ 303, 306 (1950).

Furthermore, as per the limitation "the website enables, if the gift is refused, the second party to respond to said first party that attempted sending said gift", so as the combination discloses the computer implemented system allowing/enabling communication between parties, and so as there is no user interaction with said computer system for this limitation is required, the combination discloses the recited limitation.

As per Claim 130.

Bezos et al ('089) discloses said method, wherein the processing said request to send a gift is carried out without revealing the non-pseudonymous name of said first party to said second party (see paragraph (0016), lines 1-14 and paragraph (0022)).

As per Claim 131.

Bezos et al ('089) discloses said method, wherein the processing said request to send a gift is carried out without revealing the non-pseudonymous name of said second party to said first party (see paragraph (0016), lines 1-14 and paragraph (0022)).

As per Claim 132.

Bezos et al ('089) discloses said method, wherein the processing said request to send a gift is carried out without revealing the non-pseudonymous name of said first party to said second party, and without revealing the non-pseudonymous name of said second party to said first party (see paragraph (0016), lines 1-14 and paragraph (0022)).

As per Claim 133,

Bezos et al ('089) further discloses the step of communicating to a third party (the postal service) an order that said gift be sent [0003]. While Bezos et al. does not specifically teach that said communicating step is conducted electronically, it is old and well known to communicate using electronic communications means, for example to use electronic mail for communicating over the Internet, as evidenced by Bezos et al. (electronic mail address [0015], lines 9-12), for the benefit of saving time.

Claims 1-14, 16, 22-24, 26, 30-46, 48, 54-56, 58, 62-78, 80, 86-88, 90, 94-108, 110, 112, and 126-128 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos et al in view of Micali further in view of MacNaughton and further in view of Kobata et al. (US 7,051,003 B1).

As per Claim 1.

Bezos et al ('089) discloses:

receiving a request over the internet from a first Party for a gift to be sent to a second party, see figure 4 and paragraph (0015), lines 5-8 and (0016);

processing said request to send the gift by accessing a database containing the non-pseudonymous name of said second party; [0015]-[0018]; [0025];

obtaining over the Internet from said first party a pseudonym of said second party, see figure 5 (501a, 502a) and paragraph (0015)lines 8-14;

securing over the Internet a non-pseudonymous name and address associated with the second party's pseudonym, see figure 8 (801,804, 805);

determining, over the Internet, whether said second party would accept the gift, see figures 3, 5, 6 and (0019), if sufficient reply is received from the recipient via email from the email contact of (501b) or telephone contact of (502b) the second party has effectively agreed to accept the gift, and

if said second party would accept that gift, processing said request to send said gift to produce computer output enabling said gift to be sent to said second party see paragraph (0022) of one of said parties to another of said parties according to the request, see figure 8 (808).

Furthermore, Bezos discloses an option that if an email is sent (501b) and a sufficient reply is not received in the allotted time or if the telephone number is used (502b), and a message is left, see figures 5 and 6, the recipient doesn't return the call to provide the delivery information, then the gift giver is notified that the gift cannot be delivered [0015; last sentence].

While Bezos does not teach that said securing is conducted *with revealing* a non-pseudonymous name corresponding to said first party, and that said method is conducted *with revealing* a non-pseudonymous name, Bezos et al does not explicitly teach that said securing is conducted *without revealing* a non-pseudonymous name corresponding to said first party, and that said method is conducted *without revealing* a non-pseudonymous name of one of said parties to another of the parties.

Micali teaches conducting anonymous transactions between the sender and the recipient, wherein each party does not know the identity of the other party (C. 2, L. 21-24).

It would have been prima face obvious to one having ordinary skill in the art at the time the invention was made to modify Bezos to include that said securing is conducted *without revealing* a non-pseudonymous name corresponding to said first party, and that said method is conducted *without revealing* a non-pseudonymous name of one of said parties to another of the parties, as suggested in Micali, because it would advantageously allow the participants to hide the fact that they in communication with other party, as specifically stated in Micali (C. 1, L. 27-31).

The combination of Bezos and Micali does not explicitly teach that said database is a membership database.

MacNaughton teaches a method and system for integrating an on-line service community with a foreign service, wherein said system includes a membership database (Fig. 1B, item 44), said membership database includes names and addresses

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of the registered participants (parties) of said on-line community and is utilized for communication (C. 8, L. 29-33).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination to include that said database containing non-pseudonymous name of said first party and said non-pseudonymous name of said second party is a membership database, as disclosed in MacNaughton, because it would advantageously allow to provide said gift to community-oriented members, thereby expanding the audience and potentially increase revenue (MacNaughton.; C. 2, L. 63-67). Alternatively, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination to include that said database containing non-pseudonymous name of said first party and said non-pseudonymous name of said second party is a membership database, as disclosed in MacNaughton, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable. The rationale to support a conclusion that the claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination yielded nothing more than predictable results to one of ordinary skill in the art. KSR, 550 U.S. at, 82 USPQ2d at 1395; Sakraida v. AG Pro, Inc., 425 U.S. 273, 282, 189 USPQ 449, 453 (1976); Anderson's-Black Rock, Inc. v. Pavement Salvage Co., 396 U.S. 57, 62-63,

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163 USPQ 673, 675 (1969); Great Atlantic & P. Tea Co. v. Supermarket Equipment Corp., 340 U.S. 147, 152, 87 USPQ 303, 306 (1950).

Also, the combination of Bezos and Micali does not specifically teach that if said second party *would not accept* the gift, electronically informing said first party that said second party *has chosen not to accept* said gift.

Kobata et al. (Kobata) teaches an electronic parcel delivery method, wherein, if the user receives notification regarding delivery of the electronic parcel, the user reviews attributes of the parcel (such as the identity of the sending system, the name of the parcel, the time sent, and the parcel size). After that the user can decide to accept or reject delivery of the parcel, and, consequently, rejects the parcel (C. 6, L. 56-64).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination to include that if said second party *would not accept* the gift, electronically informing said first party that said second party *has chosen not to accept* said gift, as disclosed in Kobata, because it would advantageously allow to avoid delivery from unwanted, suspicious, or unknown senders, as specifically stated in Kobata (C. 6, L. 65-67).

Furthermore, as per the limitation "enabling said second party to respond to said first party if refusing an attempted gift to said second party by the first party", so as the combination discloses the computer implemented system allowing/enabling communication between parties, and so as there is no user interaction with said computer system for this limitation is required, the combination discloses the recited limitation.

As per Claim 2.

Bezos et al ('089) further discloses the step of issuing an order that said gift be send to said second party's non-pseudonymous name and address, see figure 8 (809).

As per Claim 3,

Bezos et al ('089) further discloses the step of securing a non-pseudonymous name and address associated with said second party's pseudonym is carried out by looking up said second party's pseudonym (electronic mail address Bezos et al., [0015], lines 9-12) in a network database (Internet-based database) [0016], lines 19-24.

The combination of Bezos et al, Micali and Kubata et al. does not specifically teach that said network database is a membership database.

MacNaughton et al. teaches a method and system for integrating an on-line service community with a foreign service, wherein said system includes a membership database (Fig. 1B, item 44), said membership database includes names and addresses of the registered participants (parties) of said on-line community (C. 8, L. 29-33).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination to include that said database is a membership database, as disclosed in MacNaughton et al., because it would advantageously allow to provide said gift to community-oriented members, thereby expanding the audience and potentially increase revenue (MacNaughton et al.; C. 2, L. 63-67). Furthermore, in this case, each of the elements of the cited references combined by the Examiner performs the same function when combined as it does in the

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prior art. Thus, such a combination would have yielded predictable results. See *Sakraida*, 425 U.S. at 282, 189 USPQ at 453. Therefore, Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* (KSR, 82 USPQ2d at 1396) forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex arte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007).

As per Claim 4.

Bezos et al ('089) further discloses contacting said second party and requesting revelation of said second party's non-pseudonymous name and address, see figure 5 (501b, 502b) and figure 3 (305).

As per Claims 5-8.

Giving said second party an opportunity to choose whether said second party will accept, or will not accept, attempted gifts addressed only to said second party's pseudonym; and if said second party exercises the opportunity, storing in a database in association with said second party's pseudonym or name and address. (Same rationale as applied to claim 1).

As per Claim 9.

Bezos et al ('089) further discloses informing the first party that the second party has not chosen to accept the blind gift, see figure 9 (905) and (0015) last 3 lines.

As per Claim 10,

Bezos et al ('089) further discloses the step of communicating to a third party (the postal service) an order that said gift be sent [0003]. While Bezos et al. does not specifically teach that said communicating step is conducted electronically, it is old and well known to communicate using electronic communications means, for example to use electronic mail for communicating over the Internet, as evidenced by Bezos et al. (electronic mail address [0015], lines 9-12), for the benefit of saving time.

As per Claim 11,

Bezos et al ('089) further discloses giving the first party an opportunity to reveal true identity information about said first party's self, see paragraph (0021) lines 21-23.

As per Claim 12,

Bezos et al ('089) further discloses giving the second party an opportunity to reveal true identity information about said second party's self, see figure 6 (603, 605).

As per Claim 13,

Bezos et al ('089) further discloses electronically charging a fee, see paragraph (0021) line 21-22.

As per Claim 14.

Bezos et al ('089) further discloses electronically charging a fee to a charge card, see paragraph (0021) line 21-22.

As per Claim 16.

Bezos et al ('089) further discloses electronically charging a fee, see paragraph (0.021) line 21-22.

As per Claim 22,

Kobata et al. discloses that upon reviewing the attributes of the parcel (such as the identity of the sending system, the name of the parcel), the user can decide to accept or reject delivery of the parcel, and, consequently, rejects the parcel (C. 6, L. 56-64) for the benefit of avoiding delivery from suspicious or unknown senders (C. 6, L. 65-67), thereby suggesting the feature of refusing said gift from said first party if said first party *is not identified by a particular name*.

As per Claim 23,

Kobata et al. discloses that upon reviewing the attributes of the parcel (such as the identity of the sending system, the name of the parcel), the user can decide to accept or reject delivery of the parcel, and, consequently, rejects the parcel (C. 6, L. 56-64) for the benefit of avoiding delivery from suspicious or unknown senders (C. 6, L. 65-67), thereby suggesting the feature of refusing said gift from said first party if said first party *is not identified by a true name*.

As per Claim 24,

Kobata et al. discloses that upon reviewing the attributes of the parcel (such as the identity of the sending system, the name of the parcel), the user can decide to accept or reject delivery of the parcel, and, consequently, rejects the parcel (C. 6, L. 56-64) for the benefit of avoiding delivery from unwanted senders (C. 6, L. 65-67), thereby suggesting the feature of refusing said gift from said first party if said first party *is identified by a particular* pseudonym.

As per Claim 26.

Kobata et al. discloses responding to said first party after delivery of a parcel sent to said second party by said first party (C. 8, L. 32-33). The motivation to combine would be to provide the sending party a mechanism for confirming receipt and subsequent use of the parcel (Kobata et al, C. 8, L. 41-43).

As per Claim 30.

Bezos et al ('089) further discloses gift is sent responsive to a message from the second party, see figure 6 (603).

As per Claim 31.

Bezos et al ('089) further discloses gift-is sent responsive to an acceptance communication from the second party, see figure 6 (606).

As per Claim 32.

Bezos et al ('089) further discloses gift is sent only responsive to an acceptance communication from the second party, see figures 5 and 6, if the telephone number is used, and a message is left, see figures 5 and 6; if the recipient doesn't return the call to provide the delivery information, the recipient has effectively refused receipt of the gift.

As per Claim 33-34, 36-46, 48, 62-64.

Bezos et al ('089) further discloses the step of processing said request to send a gift, see paragraph (0022), lines 9-18, (0015); (0017) and reasoning applied to independent claims.

As per Claim 35.

Bezos et al ('089) further discloses the step of processing said request to send a gift is carried out without revealing the non-pseudonymous name of said first party to said second party, and without revealing a non-pseudonymous name of said second party to said first party, see paragraph (0022) specifically lines 9-18 (the second party is given the tracking number of the gift order, not the first party's non-pseudonymous name) and paragraphs (0015) and (0017) (the first party enters only the email address or phone number of the second party and databases or contact by the service gather the information from the second party). As per membership database per se, MacNaughton teaches said feature (same rationale as applied to claims 1 and 3).

As per Claims 54-56, 58,

Bezos et al teaches processing a request to send said gift by accessing a membership database containing the non-pseudonymous name (electronic mail address) of said second party (same reasoning as applied to claim 3).

As per Claims 65-66, 68-78, 80, 101-108, 110, 112.

Bezos et al ('089) further discloses the step of processing said request to send a gift is, see paragraph (0022) lines 9-18; and reasoning applied to independent claims. Furthermore, it is old and well known present people with flowers for various reasons (for example flowers are often given for a celebration such as Valentines Day, birthdays, presented by children young and old to their Mums on Mother's Day). Therefore, it would have been prima face obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Bezos et al., Micali and Kobata et al. to include that said gift is flowers, because a rose on Valentines Day says more than words ever could.

As per Claim 67.

Bezos et al further discloses the step of processing said request to send a gift is carried out without revealing the non-pseudonymous name of said first party to said second party, see paragraph (Bezos, (0022) specifically lines 9-18 (the second party is given the tracking number of the gift order, not the first party's non-pseudonymous name)). As per membership database per se, MacNaughton teaches said feature (same rationale as applied to claims 1 and 3).

As per Claims 86-88, 90,

MacNaughton et al. teaches a method and system for integrating an on-line service community with a foreign service, wherein said system includes a membership database (Fig. 1B, item 44), said membership database includes names and addresses of the registered participants (parties) of said on-line community (C. 8, L. 29-33).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination to include that said database containing non-pseudonymous name of said first party and said non-pseudonymous name of said second party is a membership database, as disclosed in MacNaughton because it would advantageously allow to provide said gift to community-oriented members, thereby expanding the audience and potentially increase revenue (MacNaughton C. 2, L. 63-67).

As per Claims 94-98, 100.

Bezos et al ('089) further discloses the step of processing said request to send a gift, see paragraphs (0025) and (0017). and reasoning applied to independent claims. Furthermore, it is old and well known to give candy (for birthdays, Halloween). Therefore, it would have been prima face obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Bezos et al., Micali and Kobata et al. to include that said gift is candy for the benefit of pleasing kids.

As per Claims 99.

Bezos et al further discloses the step of processing said request to send a gift is carried out without revealing the non-pseudonymous name of said second party to said first party, (Bezos, see paragraphs (0025) and (0017) (the first party enters only the email address or phone number of the second party and databases or contact by the service gather the information from the second party)).

As per Claims 126-128.

Bezos et al ('089) further discloses enabling the processing with a website of a member network, said first party and said second party being respective members, and wherein the processing step is carried out accessing member data internal to the network to obtain the non-pseudonymous name and address of the second party (same reasoning as applied to claim 3).

Claims 15, 47, 79, and 111 are rejected under 35 U.S.C. 103(a) as obvious over Bezos in view of Micali further in view of MacNaughton further in view of Kobata and further in view of Walker (US 6,330,544).

As per claims 15, 47, 79, 111.

Bezos et al ('089) further discloses electronically charging a fee to a charge card, see paragraph (0021) line 21-22.

The combination of Bezos, Micali, MacNaughton and Kubata teaches all limitations of claims 15, 47, 79, 11, except specifically teaching the step of confirming receipt of said order that said blind gift be sent, before electronically charging said fee to said first party.

Walker (6,330,544) teaches charging after confirmation of receipt of a gift, see column 3, lines 31-35 for the benefit of greater flexibility in gift giving

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the combination to include confirming receipt of said order that said gift be sent, before electronically charging said fee, as disclosed in Walker, for the benefit of greater flexibility in gift giving, as specifically stated in Walker.

Claims 17, 18, 49, 50, 81, 82, 113, and 114 are rejected under 35 U.S.C. 103(a) as obvious over Bezos in view of Micali further in view of MacNaughton further in view of Kubata and further in view of Oneda (US 5,965,860).

As per Claims 17, 49, 81, 113.

Bezos et al ('089) further discloses electronically charging a fee related to the value of the gift, see paragraph (0021) lines 21-22.

The combination of Bezos, Micali, MacNaughton and Kubata does not disclose the step of charging another fee.

Oneda ('860) teaches a membership management system that charges a membership fee, see column 6, lines 3-10 for the benefit of recovering operating costs.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the combination to include registering members and charging a membership fee, as disclosed in Oneda, for the benefit of recovering operating costs, as specifically stated in Oneda.

As per Claims 18, 50, 82, 114.

Bezos et al ('089) further discloses electronically charging a fee related to the value of the gift, see paragraph (0021) lines 21-22.

The combination of Bezos, Micali, MacNaughton and Kubata does not disclose the step of charging a fee to the second party.

Oneda ('860) teaches a membership management system that charges a membership fee, see column 6, lines 3-10 for the benefit of recovering operating costs.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the combination to include registering members and charging a membership fee for the benefit of recovering operating costs, as specifically stated in Oneda.

Claim 137 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos in view of Micali further in view of MacNaughton and further in view of Douglas et al. (US 6,039,688).

As per Claim 137.

Bezos et al ('089) discloses:

providing a database of non-pseudonym names and associated pseudonyms for parties (0015);

requesting a gift by said first party for said second party using said pseudonyms with said website, see figure 4 and paragraph (0015), lines 5-8 and (0016);

sending said gift from said first party to said second party (0022).

While Bezos does not teach that said sending is conducted *with revealing* said non-pseudonymous name corresponding to said first party to said second party and *with revealing* said non-pseudonymous name of said second party to said first party, Bezos does not explicitly teach that said sending is conducted without revealing said non-pseudonymous name corresponding to said first party to said second party and without revealing said non-pseudonymous name of said second party to said first party.

Micali teaches conducting anonymous transactions between the sender and the recipient, wherein each party does not know the identity of the other party (C. 2, L. 21-24).

It would have been prima face obvious to one having ordinary skill in the art at the time the invention was made to modify Bezos to include that said sending is conducted without revealing said non-pseudonymous name corresponding to said first party to said second party and without revealing said non-pseudonymous name of said second party to said first party, as suggested in Micali, because it would

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advantageously allow the participants to hide the fact that they in communication with other party, as specifically stated in Micali (C. 1, L. 27-31).

Also, the combination of Bezos and Micali does not specifically teach: initially only revealing to a first party of said parties said associated pseudonym of a second party of said parties.

MacNaughton teaches said method for integrating an on-line service community with a foreign service, wherein said system includes a membership database (Fig. 1B, item 44), said membership database includes names and associated pseudonyms of the registered participants (parties) of said on-line community (C. 8, L. 29-33), wherein when members access the website, they are presented with "Who's Online" list (C. 7, L. 5-6).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination to include that said database is a membership database, as disclosed in MacNaughton, because it would advantageously allow to provide said gift to community-oriented members, thereby expanding the audience and potentially increase revenue, as specifically stated in MacNaughton; C. 2, L. 63-67. Furthermore, in this case, each of the elements of the cited references combined by the Examiner performs the same function when combined as it does in the prior art. Thus, such a combination would have yielded predictable results. See *Sakraida*, 425 U.S. at 282, 189 USPQ at 453. Therefore, Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* (KSR, 82 USPQ2d at 1396) forecloses the argument that a specific teaching, suggestion, or motivation is required to support a

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finding of obviousness. See the recent Board decision *Ex parte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007).

Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination to include that wherein when members access the Web site, they are presented with "Who's Online" list, as disclosed in *MacNaughton* because it would advantageously allow the participants to invite other currently participating participants to play a game, as specifically stated in *MacNaughton* (C.9, L. 25-26).

The combination of *Bezos*, *Micali* and *MacNaughton* does not explicitly teach that said "Who's Online" list includes pseudonym names of the participants.

Douglas et al. (*Douglas*) teaches a method for on-line communication, wherein members of on-line community communicate via a chat room, and wherein each participant is presented with the "Who's Online" list (avatars) of other participants, wherein said list includes pseudonyms of the other participants (C. 11, L. 44-47; C. 13, L. 29-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include that the initially presented name of the participating participant is a pseudonym name, as taught by *Douglas* in the disclosed method of the combination, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable. The rationale to support a conclusion that the claim

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would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination yielded nothing more than predictable results to one of ordinary skill in the art. KSR, 550 U.S. at, 82 USPQ2d at 1395; Sakraida v. AG Pro, Inc., 425 U.S. 273, 282, 189 USPQ 449, 453 (1976); Anderson's-Black Rock, Inc. v. Pavement Salvage Co., 396 U.S. 57, 62-63, 163 USPQ 673, 675 (1969); Great Atlantic & P. Tea Co. v. Supermarket Equipment Corp., 340 U.S. 147, 152, 87 USPQ 303, 306 (1950).

Furthermore, as per the limitation "the website enables, if the gift is refused, the second party to respond to said first party that attempted sending said gift", so as the combination discloses the computer implemented system allowing/enabling communication between parties, and so as there is no user interaction with said computer system for this limitation is required, the combination discloses the recited limitation.

Response to Arguments

Applicant's arguments with respect to claims 1-26, 28-58, 60-90, 92-108, 110-122, and 124-137 have been fully considered but they are not persuasive.

In response to Applicant argument that claims rejections under 35 U.S.C. 112, first paragraph, for claims 19 and 134-136 have to be withdrawn, it is noted that claim language is vague and indefinite, and it is unclear whether said network, membership

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database and first party computer are elements of said apparatus. The only positive recitation of a structural element is a "website". Further, the whole claim reads as an intended use rather than an apparatus. Examiner recognizes that a functional limitation is an attempt to define something by what it does, rather than by what it is, and functional language does not, in and of itself, render a claim improper. In re Swinehart, 439 F.2d 210, 169 USPQ 226 (CCPA 1971). However, in this case, the system claim positively recites only a gift giving website. Therefore, claims rejections under 35 U.S.C. 112, first paragraph, stands.

Remaining Applicant's arguments with respect to claims 1-26, 28-58, 60-90, 92-108, 110-122, and 124-137 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

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applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Igor N. Borissov/

Primary Examiner, Art Unit 3628

4/29/2012